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No. 01-800

In The

Supreme Court of the United States

KAREN HOWSAM, individually and as Trustee for the E. Richard Howsam, Jr. Irrevocable Life Insurance Trust dated May 14, 1982,

Petitioner,

v.

DEAN WITTER REYNOLDS, INC., a Delaware corporation,

Respondent.

On Writ Of Certiorari To The United States Court Of Appeals For The Tenth Circuit

JOINT APPENDIX

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Client Service Agreement

The undersigned (the "Client") hereby retains, under the terms and conditions set forth herein, Dean Witter Reynolds Inc. ("Dean Witter"), and Dean Witter accepts such engagement.

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1. Consulting Services

Dean Witter will provide the Client with the following services:

a. After receipt of appropriate information from and about the Client, as set forth in a completed Investment Plan Questionnaire and Client Profile, Dean Witter will (i) provide the Client with a Policy Statement of Investment Objectives and Guidelines, (ii) identify for the Client investment advisors deemed suitable for the Client from among those participating in the ACCESS program based upon the information made available by the Client and the advisors, including the advisors' Form ADV or, for advisors exempt from registration under the Investment Advisers Act of 1940, such other similar disclosure document as is satisfactory to Dean Witter, and (iii) provide the Client with copies of such identified advisors' Investment Advisor Profiles, discussed in paragraph 4 hereof, and copies of such advisors' Forms ADV, Part 2, or other disclosure documents (such Forms

ADV, Part 2 or other disclosure documents being hereinafter referred to as the "Advisors' Disclosure Documents") in compliance with Rule 204-3(a) of the Investment Advisers Act of 1940.

b. Dean Witter will pay one or more independent investment advisors (collectively herein the "Advisor") selected by the Client to manage the ACCESS brokerage account(s) which the Client has opened with Dean Witter (collectively herein the "Account").

c. Dean Witter will provide Quarterly Performance Measurement Summary reports with respect to the Account managed by the Advisor.

d. Dean Witter will periodically monitor the performance of the Advisor for purposes of determining whether the Advisor will continue to be included in the list of advisors participating in the ACCESS program.

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2. Brokerage

As set forth in paragraph 7 hereof, Dean Witter will provide brokerage services to the Client with respect to the Account. Dean Witter will send confirmations of transactions executed by Dean Witter for the Account and prepare and supply account statements to the Client with respect to the Account.

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3. Custody of Assets

Dean Witter will maintain custody of the cash, securities and other investments (the "Assets") in the Client's Account and will receive and credit to the Account all interest, dividends and other distributions received by Dean Witter on the Assets in the Account. Dean Witter is not responsible for custody of assets of the Client not in the Account.

. . .

---

4. The Advisor

The Client has selected the Advisor to direct the investment and reinvestment of the Assets in the Client's Account. The Client hereby engages the Advisor subject to the terms and conditions of this Agreement and the ACCESS Master Investment Advisors Agreement between the Advisor and Dean Witter, substantially in the form of Exhibit A attached hereto and made a part hereof, and on the basis of the Advisor's Investment Advisor Profile developed pursuant to the Master Investment Advisors Agreement and the Advisors' Disclosure Documents.

. . .

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18. Governing Law

This Agreement shall be construed and enforced in accordance with the laws of the State of New York without reference to choice of law doctrine.

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19. Arbitration Disclosures

- Arbitration is final and binding on the parties.
- The parties are waiving their right to seek remedies in court, including the right to jury trial.
- Pre-arbitration discovery is generally more limited than and different from court proceedings.
- The arbitrators' award is not required to include factual findings or legal reasoning and any party's right to appeal or to seek modification of rulings by the arbitrators is strictly limited. The panel of arbitrators will typically include a minority of arbitrators who were or are affiliated with the securities industry.

The Client agrees that all controversies between the Client and Dean Witter and/or any of its officers, directors, or employees, present or former, concerning or arising from (i) any account maintained with Dean Witter by the Client; (ii) any transaction involving Dean Witter and the Client, whether or not such transaction occurred in such

account or accounts; or (iii) the construction, performance or breach of this or any other agreement between us, whether such controversy arose prior to, on or subsequent to the date hereof, shall be determined by arbitration before any self-regulatory organization or exchange of which Dean Witter is a member. The Client may elect which of these arbitration forums shall hear the matter by sending a registered letter or telegram addressed to Dean Witter at 130 Liberty Street, New York, New York 10006, Attn: Law Department. If the Client fails to make such election before the expiration of five (5) days after receipt of a written request from Dean Witter to make such election, Dean Witter shall have the right to choose the forum. Any arbitration proceeding between Dean Witter and the Client shall be held at the location at which the selected forum regularly conducts such proceedings nearest to the Dean Witter office carrying the Client's accounts. The award of the arbitrator or a majority of the arbitrators shall be final. Judgment on the award rendered may be entered in any state or federal court having jurisdiction.

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20. Miscellaneous

All paragraph headings in this Agreement are solely for convenience, and do not affect the meaning or interpretation of this Agreement.

The Client hereby acknowledges receipt of a copy of this Agreement which includes a pre-dispute arbitration clause at Section 19 and a copy of Dean Witter's Form ADV, Part II, or the Investment Consulting Services Disclosure Document and the Advisor's Disclosure Documents.

Notwithstanding anything to the contrary herein, the Client shall have the right to terminate this Agreement without penalty within five (5) business days of the execution of this Agreement.

The Client hereby notifies Dean Witter of the selection of the following Advisor(s) pursuant to the terms of this Agreement.

Avatar	343-57317-42
Advisor's Name	Account Number
Advisor's Name	Account Number
Advisor's Name	Account Number

1. _____ /s/ Karen Howsam
   Name of Client — Signature/Title

   _____ _____
   Name of Client (if more than one Client) — Signature/Title

   _____
   Date

   _____
   Client Address

2. Dean Witter Reynolds Inc.

   By: /s/ [Illegible]
   Signature of Branch Manager

   8/26/92
   Date

NATIONAL ASSOCIATION OF SECURITIES DEALERS

NASD Arbitration No. 97-01394

KAREN HOWSAM, INDIVIDUALLY AND AS TRUSTEE FOR THE E. RICHARD HOWSAM, JR. IRREVOCABLE LIFE INSURANCE TRUST DATED MAY 14, 1982,

Claimant,

vs.

DEAN WITTER REYNOLDS, INC., ROBERT P. HOWARD, and PAUL J. SILER,

Respondents.

AMENDED STATEMENT OF CLAIM

Claimant Karen Howsam, individually and as trustee for the E. Richard Howsam, Jr. Irrevocable Life Insurance Trust dated May 14, 1982 ("the Trust"), alleges as follows:

1. At all times relevant hereto, Karen Howsam was a resident of Denver, Colorado, and dealt with respondents Dean Witter Reynolds, Inc. ("DWR"), Robert P. Howard ("Howard") and Paul J. Siler ("Siler"), through DWR's office located at 4582 S. Ulster Street, Suite 300, Denver, Colorado.

2. On January 6, 1986, Ms. Howsam's husband, E. Richard Howsam, Jr., died. Ms. Howsam was left with a son, Ryan, then age 14, and a daughter, Jill, then age 8.

3. Mr. Howsam had been a principal in a company called Striker Petroleum. His partners in Striker Petroleum were Siler and Eric Siler.

4. Sometime prior to 1986, Siler had become a stockbroker. Siler subsequently became a registered representative and account executive with DWR.

5. After Mr. Howsam's death in January 1986, proceeds from insurance policies on his life were paid into the Trust. Ms. Howsam, Siler and Eric Siler were co-trustees of the Trust.

6. After Mr. Howsam's death, Ms. Howsam was introduced to Howard, a registered representative and account executive of DWR, and recommended that she use DWR to manage the Trust's and her funds. Ms. Howsam agreed to transfer the Trust's and her funds to DWR because DWR was well-known and respected and she believed DWR would act in the Trust's and her best interests.

7. Prior to Mr. Howsam's death, Ms. Howsam had no investment experience. She informed Howard and DWR that she wanted a conservative portfolio which would preserve principal and provide income for living expenses for the family and education expenses for the children.

8. In March 1986, Howard recommended, and Siler as co-trustee approved, the Trust's purchase of 202 units of Dean Witter Realty Income Partnership III, L.P. ("Income Partnership") at $495.00 per unit, for a total investment of $99,990. The units were purchased on March 3, 1986, through DWR Account No. 343-026761.

9. Also in March 1986, Howard recommended, and Siler as co-trustee approved, the Trust's purchase of 200 units of Century Properties Growth Fund XXII ("Century

Properties") at $1,000 each, for a total of $200,000. The purchase was made March 11, 1986, through DWR Account No. 343-026761.

10. On March 11, 1986, Howard recommended, and Siler as co-trustee approved, the Trust's [purchase of] 400 units at $500 each of Public Storage Properties XVII ("Public Storage"), for a total purchase price of $200,000.

11. Ms. Howsam also opened a personal account at DWR. Howard was the account executive for her personal account. Her account number was 343-026802.

12. In July 1986, Howard recommended that Ms. Howsam purchase 50 units of Dean Witter Realty Growth Properties, L.P. ("Growth Properties") at a price of $1,000 per unit, or a total of $50,000. The units were purchased on July 8, 1986. Siler is listed as Ms. Howsam's account executive for the purchase of Growth Properties, presumably because he received all or part of the account executive's commission.

13. Both Howard and Siler told Ms. Howsam that the limited partnerships were excellent investments which would provide good returns. They informed her that the limited partnerships would pay the Trust and Ms. Howsam income over a five to ten year period, at the end of which either the partnership assets would be sold or Ms. Howsam would sell her partnership interests. They informed her that she would be able to sell her partnership interests no later than 1996 for the amount she invested or more. They told her that the partnership investments were not risky.

14. Howard and Siler did not inform Ms. Howsam of the amount of commission they would receive on the sales of the limited partnership interests. Ms. Howsam was not aware that partnership sales involved higher commissions to account executives than were paid on other forms of investments. Moreover, Ms. Howsam was not informed that DWR account executives received higher commissions to sell DWR products such as Growth Properties and Income Properties.

15. Beginning in February 1988, according to the account statements for Ms. Howsam's personal accounts, Paul F. Vader, Jr. became Ms. Howsam's account executive. Although Ms. Howsam requested account statements for the Trust account, no statements were provided by DWR for the period prior to September 1992, when Mr. Vader opened an investment management "wrap" account for the Trust.

16. Ms. Howsam's personal account statements continued to show Ms. Howsam's interest in Growth Properties at $50,000 through the end of March 1992. Thereafter, account statements indicated that no value was available. However, through late 1994, Vader continually assured Ms. Howsam that she need not worry about the value of the partnerships and told her that they continued to be good investments.

CENTURY PROPERTIES GROWTH FUND XXII

17. Century Properties Growth Fund XXII was formed in October 1985. By the time respondents sold the Trust two hundred units for $200,000, it should have been apparent to DWR, which had a duty to review such

investments before recommending them to customers, that the fund was a fiasco in the making. The fund's activities since its inception in October 1985 consisted of buying properties in rapidly declining real estate markets. Moreover, by the time the units were sold to the Trust, other similar partnerships with the same general partner were experiencing declining performance. In addition to the declining performance, of which respondents either were or should have been aware, by March 1986, when the investment was recommended and sold to the Trust, respondents were or should have been aware that certain proposed tax legislation ultimately passed in the fall of 1986 posed serious threats to the economic value of real estate and would potentially have a serious negative impact on the fund. In particular, the proposed tax bill (HR 3838), would replace eighteen or nineteen year depreciation with thirty year depreciation and would take away other tax benefits of real estate ownership. Respondents did not disclose to Ms. Howsam that the fund was continuing to purchase properties in declining real estate markets or that passage of HR 3838 would potentially cause her investment to lose value. There was no disclosure to Ms. Howsam by respondents prior to the Trust's investment in the Fund that other similar funds with the same general partner were not performing well.

18. Through December 1993, the fund distributed only approximately $3,000 to the Trust. Had the Trust's $200,000 been invested at 8% [per] annum, compounded annually, it would now be worth approximately $466,000.00. Had it been invested in suitable conservative, liquid equities, it would be worth considerably

more. Not until its 1994 annual report did the fund disclose that it appeared that its investment objective of capital growth would not be attained and that investors would not receive all of their money back. Until that time, respondents had continued to assure Ms. Howsam that the Trust's investment was sound.

DEAN WITTER REALTY INCOME PARTNERSHIP III, L.P.

19. Respondents wore several hats in recommending and selling 202 units of Dean Witter Realty Partnership III, L.P. ("Income Partnership") to the Trust for $99,990.

20. The managing general partner of Income Partnership was Dean Witter Realty Income Properties III, Inc., an affiliate of DWR. The Income Partnership units were offered through DWR as the selling agent. Limited partnership units could only be purchased through a brokerage account maintained with DWR. DWR received up to 8% in commissions and 3% of the gross proceeds of the offering went to DWR as managing general partner as "acquisition fees." DWR further stood to profit from additional management fees and contemplated that its affiliates might earn development fees and real estate brokerage commissions on future real estate acquisitions and developments. Further, DWR contemplated receiving 10% of distributable cash from future operations of the Income Partnership. It also contemplated that it or its affiliates would receive additional fees for investment management, mortgage brokerage, insurance brokerage

or leasing services with respect to partnership investments. With the obvious conflict of interests in selling its own investment product, with a myriad of profit sources for DWR, and respondents' duty to recommend and sell to the Trust only suitable investments, respondents had a heightened fiduciary duty to the Trust.

21. Income Partnership was essentially a "blind pool," in that its offering documents did not identify specific properties which would be purchased by the limited partnership. The prospectus was dated February 12, 1986. The Trust's subscription was accepted March 31, 1986. By that time, it was or should have been clear to DWR, in its capacities both as managing general partner and investment adviser with a duty to its customers to recommend only suitable investments, that the downtrend in rents and property values was accelerating and more broad-based than initially thought. It was obvious, or was certainly becoming obvious, that the investors would be better served by return of the uninvested cash to the limited partners in lieu of further purchases. Because the projected success of the investment depended in large part upon increasingly high rents in the future, the clear trend by March 1986 and the months thereafter, required that DWR, as managing partner, refrain from pouring more money into the real estate market. It also required that DWR and the individual respondents, in their roles as brokers for the Trust, properly advise Ms. Howsam not to purchase the Income Partnership units or to sell them soon after the purchase.

22. Income Partnership was sold as an investment vehicle suitable for retirement accounts and trusts and as an economic, as opposed to tax shelter, investment.

23. DWR represented that the pending tax proposals should not have a significant impact upon an investment income partnership.

24. Through the end of 1996, the Trust received distributions from Income Partnership of approximately $72,000. Had the Trust's $99,990 been invested at 8%, compounded annually, it would now be worth approximately $233,000. Had it been invested in suitable conservative, liquid equities, it would be worth considerably more.

25. Through 1994, respondents, through Vader, continued to assure Ms. Howsam that the Income Partnership investment remained sound and would ultimately be profitable. By late 1994, Ms. Howsam had become frustrated with the overall performance of the Trust's and her individual portfolio and moved all of her accounts from DWR.

PUBLIC STORAGE PROPERTIES XVII

26. Public Storage Properties XVIII, [sic] Ltd., was a limited partnership which, in a reorganization transaction completed on September 16, 1991, became Public Storage Properties XVIII, Inc., a real estate investment trust organized as a California corporation. Although the corporation's Form 10-K states that the partnership offered units of limited partnership interests to the public in September 1986, the Trust purchased 400 units at $500 each, for a total of $200,000, on March 12, 1986. While Public Storage was less leveraged and therefore a more conservative real estate-related investment than the other limited partnerships sold to the Trust and Ms. Howsam by

[respondents], the investment of $200,000 in another liquid real estate-related partnership was unsuitable in light of the circumstances and investment objectives of the Trust.

27. Ms. Howsam believes, subject to future verification, that the Trust will have recovered most of its $200,000 investment during the 11 years since the purchase of Public Storage units. However, had the Trust's $200,000 been invested at [8] percent, compounded annually, it would now be worth approximately $466,000. Had it been invested in suitable conservative, liquid equities, it would be worth considerably more.

DEAN WITTER REALTY GROWTH PROPERTIES LP

28. Dean Witter Realty Growth Properties, L.P. ("Growth Properties") is a limited partnership formed in 1985. Its managing general partner is Dean Witter Realty Growth Properties, Inc., which is wholly owned by DWR. The Growth Properties units were sold only through DWR.

29. The DWR conflicts of interest, Ms. Howsam's lack of investment experience, and her relationship with Siler, her husband's business partner and co-trustee of the Trust, imposed on respondents a high degree of fiduciary responsibility to recommend and sell to Ms. Howsam only suitable investments.

30. Ms. Howsam's investment of $50,000 in Growth Properties was accepted by the managing general partner on August 6, 1986. By that time, it had become even more obvious that real estate markets were in an accelerating

decline and that investors would have been better served by return of their uninvested funds.

31. Ms. Howsam is unable to determine her return on Growth Properties at this time. However, Ms. Howsam's $50,000, invested at 8%, compounded annually, would have grown to approximately $116,500 by now. Had it been invested in suitable conservative, liquid equities, it would be worth considerably more. Not until late 1994 or later was it disclosed to Ms. Howsam that it was not likely that she would recover her investment in Growth Properties.

CLAIM FOR BREACH OF FIDUCIARY DUTIES

32. Ms. Howsam invested with DWR, Siler, and Howard because she viewed them as reputable investment advisers and brokers. In addition, she had particular trust and confidence in Siler because of his business and personal relationship with her husband and the fact that he was a co-trustee of the Trust. As a result of the relationship of trust and confidence between Ms. Howsam and the respondents, respondents owed Ms. Howsam the duties of good faith, fair dealing, reasonable care and integrity that govern fiduciaries.

33. Brokerage firms and brokers owe fiduciary duties to their customers. *See, e.g., Conway v. Icahn & Co.*, 16 F.3d 504 (2nd Cir. 1994) (finding that the relationship between a stockbroker and the customer is that of principal and agent and is fiduciary in nature). *See, also, Paine, Webber, Jackson & Curtis, Inc. v. Adams*, 718 P.2d 508 (Colo. 1986).

34. A fiduciary relationship exists when one person is under a duty to act for or give advice for the benefit of another upon matters within the scope of the relationship. A fiduciary relationship can arise when one party occupies a superior position relative to another. It may be based upon a professional, business, or personal relationship. *Moses v. Diocese of Colorado*, 863 P.2d 310 (Colo. 1993). DWR, Howard and Siler knew that Ms. Howsam was recently widowed, was responsible for the care of two minor children, had no prior investment experience, and relied entirely upon them to manage her funds and the Trust's funds prudently and to recommend and sell only investments suitable to her and the Trust's investment objectives and needs. This respondents did not do.

35. By recommending and selling to Ms. Howsam and the Trust limited partnership investments totalling $550,000, all of which were heavily loaded with commissions and other fees, all of which were heavily dependent upon the performance of real estate markets, and all of which were illiquid and highly risky investments, respondents breached their duty to recommend and sell only suitable investments.

36. It is well-settled that a securities sales person:

> . . . cannot recommend a security unless there is an adequate and reasonable basis for such recommendation. He must disclose facts which he knows and those which are reasonably ascertainable. By his recommendation he implies that a reasonable investigation has been made and that his recommendation rests on the conclusions based on such investigation. Where the salesman lacks essential information about a security, he should disclose this as well as the risks which arise from this lack of information.

Hanley v. SEC, 415 F.2d 589, 597 (2nd Cir. 1969). Respondents breached their fiduciary duty to Ms. Howsam and the Trust to investigate the status of the limited partnerships recommended and sold at or near the times of the sales. As discussed above, respondents either failed to make such investigations or deliberately ignored the declining real estate market and recent poor performance of similar limited partnerships.

37. Because of reassurances by respondents that her limited partnership investments were not in jeopardy, Ms. Howsam did not discover until late 1994 that the limited partnership investments were in trouble. The fiduciary relationship between Ms. Howsam and the Trust, on the one hand, and respondents, on the other, imposed upon respondents a duty to monitor the investments and affirmatively to advise the client as to any changes in circumstances. Respondents' failure to advise Ms. Howsam and the Trust that the limited partnership investments were no longer anticipated to perform as originally represented tolled the running of any statutes of limitation. *Vucinich v. Paine, Webber, Jackson & Curtis, Inc.*, 803 F.2d 454 (9th Cir. 1986).

38. When considering whether investors reasonably could have discovered the facts giving rise to their claims, the arbitrators should consider that a fiduciary relationship creates a climate of trust in which "facts which would ordinarily require investigation may not excite suspicion, and the same degree of diligence is not required." *Lucas v. Abbott*, 198 Colo. 477, 481, 601 P.2d

1376, 1379 (1979). Confidential relationships may cause a person "to relax the care and vigilance [he or she] would and should have ordinarily exercised in dealing with a stranger." *Ralston Oil & Gas Co. v. July Corp.*, 719 P.2d 334, 338 (Colo. App. 1985). Reliance on representations made in the context of the fiduciary relationship therefore reduces the investor's duty of inquiry.

39. Respondents possess superior knowledge, judgment, skill and experience in securities investments, in contrast to Ms. Howsam's lack of meaningful knowledge and understanding of securities investments and the substantial risk to which her and the Trust's accounts were exposed. Respondents further had superior access to information concerning the limited partnership investments and the risks attendant thereto. Such information was not readily accessible by Ms. Howsam.

40. Because of the fiduciary relationship, respondents owed Ms. Howsam and the Trust a duty to protect and further their interests over respondents' interest in generating commissions, fees and profits for themselves.

41. Because of the fiduciary relationship between Ms. Howsam and the Trust, on the one hand, and the respondents, on the other, Ms. Howsam and the Trust reasonably relied to their detriment on respondents' superior knowledge, skill, judgment and experience in recommending investments.

42. Respondents knowingly and deliberately breached their fiduciary duties to Ms. Howsam and the Trust by misrepresenting or ignoring the risks of the limited partnership investments, failing to conduct due diligence investigations of the investments at or about the

time the investments were made, and investing in unsuitable securities in total disregard for claimant's best interests, solely for the purpose of enriching themselves, and by concealing the unsuitable nature of the transactions without making requisite disclosures to claimant.

43. Respondents' breaches of fiduciary duty caused Ms. Howsam and the Trust damages of $1,000,000, including the principal invested and a reasonable rate of return on the unsuitable limited partnership investments, less amounts received from the investments.

WHEREFORE, claimant requests actual damages, together with pre-judgment interest or, if appropriate, model portfolio damages, attorneys' fees, costs, and such other relief as the arbitrators deem proper.

Dated this 10th day of April, 1997.

PENDLETON, FRIEDBERG,
WILSON & HENNESSEY, P.C.

By: /s/ Alan C. Friedberg
Alan C. Friedberg
Attorneys for Claimant
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Suite 1000
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Telephone: (303) 839-1204
Facsimile: (303) 831-0786

UNIFORM SUBMISSION AGREEMENT

NASD Arbitration

In the Matter of the Arbitration Between
Name(s) of Claimant(s)

Karen Howsam, Individually and as Trustee for the E. Richard Howsam, Jr. Irrevocable Life Insurance Trust Dated May 14, 1982,

and

Name(s) of Respondent(s)

Dean Witter Reynolds, Inc., Robert P. Howard, and Paul J. Siler

1. The undersigned parties hereby submit the present matter in controversy, as set forth in the attached statement of claim, answers, and all related counterclaims and/or third-party claims which may be asserted, to arbitration in accordance with the Constitution. By-Laws, Rules, Regulations, and/or Code of Arbitration Procedure of the sponsoring organization.

2. The undersigned parties hereby state that they have read the procedures and rules of the sponsoring organization relating to arbitration.

3. The undersigned parties agree that in the event a hearing is necessary, such hearing shall be held at a time and place as may be designated by the Director of Arbitration or the arbitrator(s). The undersigned parties further agree and understand that the arbitration will be conducted in accordance with the Constitution, By-Laws, Rules, Regulations, and/or Code of Arbitration Procedure of the sponsoring organization.

4. The undersigned parties further agree to abide by and perform any award(s) rendered pursuant to this Submission Agreement and further agree that a judgment and any interest due thereon, may be entered upon such award(s) and, for these purposes, the undersigned parties hereby voluntarily consent to submit to the jurisdiction of any court of competent jurisdiction which may properly enter such judgment.

5. IN WITNESS WHEREOF, the parties hereto have signed and acknowledged the foregoing Submission Agreement.

CLAIMANT(S) SIGNATURES(S)

Karen Howsam, Individually

Karen Howsam, Individually

FOR CLAIMANTS WHO ARE INDIVIDUALS*

STATE OF)
: ss:
COUNTY OF)

On the _____ day of _____, 1997, before me personally appeared Karen Howsam, Individually to me known and known to me to be the person(s) who executed the foregoing instrument, and (she_) acknowledged to me that (she_) executed the same.

Notary Public

My commission expires:

* *A corporate claimant is required to execute an acknowledgement in the form approved by the state in which it has its principal office. If assistance is required, please contact the Director of Arbitration.*

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of Santa Barbara

On 04-15-97 before me,
Date

Tatum Sarinana, Notary Public
Name and Title of Officer (e.g., "Jane Doe, Notary Public")

personally appeared Karen J. Howsam.
Name(s) of Signer(s)

~~[ ] personally known to me~~ – **OR** – [✓] proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/~~are~~ subscribed to the within instrument and acknowledged to me that ~~he~~/she/~~they~~ executed the same in ~~his~~/her/~~their~~ authorized capacity(~~ies~~), and that by ~~his~~/her/~~their~~ signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

/s/ Tatum Sarinana
Signature of Notary Public

[SEAL]
TATUM SARINANA
Commission #11120
Notary Public – California
Santa Barbara County
My Comm. Expires Sep 23, 2000

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: 04-15-97 – uniform submission agreement

Document Date: 04-15-97 Number of Pages: 1

Signer(s) Other Than Named Above: None

Capacity(ies) Claimed by Signer(s)

Signer's Name Karen J Howsam

[✓] Individual
[ ] Corporate Officer
Title(s): _____
[ ] Partner – [ ] Limited [ ] General
[ ] Attorney-in-Fact

[ ] Trustee
[ ] Guardian or Conservator
[ ] Other: _____

_____

Signer is Representing:

* * *

_____

UNIFORM SUBMISSION AGREEMENT

NASD Arbitration

In the Matter of the Arbitration Between
Name(s) of Claimant(s)

Karen Howsam, Individually and as Trustee for the E. Richard Howsam, Jr. Irrevocable Life Insurance Trust Dated May 14, 1982,

and

Name(s) of Respondent(s)

Dean Witter Reynolds, Inc., Robert P. Howard, and Paul J. Siler

1. The undersigned parties hereby submit the present matter in controversy, as set forth in the attached statement of claim, answers, and all related counterclaims and/or third-party claims which may be asserted, to arbitration in accordance with the Constitution. By-Laws, Rules, Regulations, and/or Code of Arbitration Procedure of the sponsoring organization.

2. The undersigned parties hereby state that they have read the procedures and rules of the sponsoring organization relating to arbitration.

3. The undersigned parties agree that in the event a hearing is necessary, such hearing shall be held at a time and place as may be designated by the Director of Arbitration or the arbitrator(s). The undersigned parties further agree and understand that the arbitration will be conducted in accordance with the Constitution, By-Laws, Rules, Regulations, and/or Code of Arbitration Procedure of the sponsoring organization.

4. The undersigned parties further agree to abide by and perform any award(s) rendered pursuant to this Submission Agreement and further agree that a judgment and any interest due thereon, may be entered upon such award(s) and, for these purposes, the undersigned parties hereby voluntarily consent to submit to the jurisdiction of any court of competent jurisdiction which may properly enter such judgment.

5. IN WITNESS WHEREOF, the parties hereto have signed and acknowledged the foregoing Submission Agreement.

CLAIMANT(S) SIGNATURES(S)

Karen Howsam, Trustee

Karen Howsam, Trustee for the
E. Richard Howsam, Jr. Irrevocable Life
Insurance Trust Dated May 14, 1982

FOR CLAIMANTS WHO ARE INDIVIDUALS*

STATE OF)
: ss:
COUNTY OF)

On the _____ day of _____, before me personally appeared _____ to me known and known to me to be the person(s) who executed the foregoing instrument, and (_____he_____) acknowledged to me that (_____he_____) executed the same.

Notary Public

** A corporate claimant is required to execute an acknowledgement in the form approved by the state in which it has its principal office. If assistance is required, please contact the Director of Arbitration.*

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of Santa Barbara

On 04-16-97 before me,
Date

Tatum Sarinana, Notary Public
Name and Title of Officer (e.g., "Jane Doe, Notary Public")

personally appeared Karen J. Howsam – Trustee.
Name(s) of Signer(s)

~~[ ] personally known to me~~ – **OR** – [✓] proved to me on the basis of satisfactory evidence to be the person(~~s~~) whose name(~~s~~) is/~~are~~ subscribed to the within instrument and acknowledged to me that ~~he~~/she/~~they~~ executed the same in ~~his~~/her/~~their~~ authorized capacity(~~ies~~), and that by ~~his~~/her/~~their~~ signature(~~s~~) on the instrument the person(~~s~~), or the entity upon behalf of which the person(~~s~~) acted, executed the instrument.

WITNESS my hand and official seal.

/s/ Tatum Sarinana
Signature of Notary Public

[SEAL]
TATUM SARINANA
Commission #11120
Notary Public – California
Santa Barbara County
My Comm. Expires Sep 23, 2000

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: Uniform Submission Agreement

Document Date: 04-16-97 Number of Pages: 1

Signer(s) Other Than Named Above: None

Capacity(ies) Claimed by Signer(s)

Signer's Name Karen J. Howsam

[ ] Individual
[ ] Corporate Officer
Title(s): _____
[ ] Partner – [ ] Limited [ ] General
[ ] Attorney-in-Fact
[✓] Trustee

[ ] Guardian or Conservator
[ ] Other: _____

Signer is Representing:

* * *

UNIFORM SUBMISSION AGREEMENT

NASD Arbitration

In the Matter of the Arbitration Between
Name(s) of Claimant(s)

Karen Howsam, Individually and as Trustee for the E. Richard Howsam, Jr. Irrevocable Life Insurance Trust Dated May 14, 1982,

and

Name(s) of Respondent(s)

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4. The undersigned parties further agree to abide by and perform any award(s) rendered pursuant to this Submission Agreement and further agree that a judgment and any interest due thereon, may be entered upon such award(s) and, for these purposes, the undersigned parties hereby voluntarily consent to submit to the jurisdiction of any court of competent jurisdiction which may properly enter such judgment.

5. IN WITNESS WHEREOF, the parties hereto have signed and acknowledged the foregoing Submission Agreement.

CLAIMANT(S) SIGNATURES(S)

/s/ David A. Chubb, Co-Trustee
David A. Chubb, Co-Trustee for the
E. Richard Howsam, Jr.
Irrevocable Life Insurance Trust
Dated May 14, 1982

FOR CLAIMANTS WHO ARE INDIVIDUALS*

STATE OF)
: ss:
COUNTY OF)

On the _____ day of _____, _____, before me personally appeared _____ to me known and known to me to be the person(s) who executed the foregoing instrument, and (_____he_____) acknowledged to me that (_____he_____) executed the same.

Notary Public

** A corporate claimant is required to execute an acknowledgement in the form approved by the state in which it has its principal office. If assistance is required, please contact the Director of Arbitration.*

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of Santa Barbara

On 04-16-97 before me,
Date

Tatum Sarinana, Notary Public
Name and Title of Officer (e.g., "Jane Doe, Notary Public")

personally appeared David A. Chubb – Co-trustee.
Name(s) of Signer(s)

~~[ ] personally known to me~~ – **OR** – [✓] proved to me on the basis of satisfactory evidence to be the person(**s**) whose name(**s**) is/~~are~~ subscribed to the within instrument and acknowledged to me that he/~~she/they~~ executed the same in his/~~her/their~~ authorized capacity(~~ies~~), and that by his/~~her/their~~ signature(**s**) on the instrument the person(**s**), or the entity upon behalf of which the person(**s**) acted, executed the instrument.

WITNESS my hand and official seal.

/s/ Tatum Sarinana
Signature of Notary Public

[SEAL]
TATUM SARINANA
Commission #11120
Notary Public – California
Santa Barbara County
My Comm. Expires Sep 23, 2000

OPTIONAL

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Title or Type of Document: Uniform Submission Agreement

Document Date: 04-16-97 Number of Pages: 1

Signer(s) Other Than Named Above: None

Capacity(ies) Claimed by Signer(s)

Signer's Name David A. Chubb

[ ] Individual
[ ] Corporate Officer
Title(s): _____
[ ] Partner – [ ] Limited [ ] General
[ ] Attorney-in-Fact
[ ] Trustee

[ ] Guardian or Conservator
[✓] Other: Co-trustee

Signer is Representing:

* * *

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 97-WM- 1463

DEAN WITTER REYNOLDS INC., a Delaware corporation,

Plaintiff,

v.

KAREN HOWSAM, individually and as trustee for the E. RICHARD HOWSAM, JR. IRREVOCABLE LIFE INSURANCE TRUST DATED MAY 14, 1982,

Defendants.

AMENDED VERIFIED COMPLAINT

(Filed July 18, 1997)

Plaintiff Dean Witter Reynolds Inc. ("Dean Witter") hereby states and alleges as follows:

JURISDICTION AND VENUE

1. Dean Witter is a corporation duly organized and existing under the laws of the State of Delaware, with its principal place of business in the State of New York. Dean Witter is a registered broker/dealer licensed to conduct business in the State of Colorado. Dean Witter maintains branch offices in Denver, Colorado.

2. On information and belief, Karen Howsam ("Howsam"), individually, is a citizen of either the State of California, residing in Santa Barbara County, or the State of Colorado, residing in Grand County, or both.

3. Howsam is a trustee ("Trustee") for the E. Richard Howsam, Jr. Irrevocable Life Insurance Trust Dated May 14, 1982 ("the Trust"). On information and belief, the situs of the Trust, and therefore its place of "citizenship," is either in the State of California, County of Santa Barbara or the State of Colorado, Grand County.

4. Complete diversity exists among the parties. Therefore, this Court has subject matter jurisdiction over this controversy pursuant to 28 U.S.C. § 1332(a)(1) and 28 U.S.C. § 2201. The amount in controversy exceeds $75,000, exclusive of interest and costs.

5. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b). The events giving rise to the claims occurred in Colorado, and most of the witnesses and documents (to the extent they still exist) are located in Colorado. Personal jurisdiction over the Defendants is proper in that Defendants transacted business with plaintiffs in Colorado, including by signing in Colorado the arbitration agreement which is the subject of this litigation.

FACTUAL ALLEGATIONS

6. On or about June 11, 1997, the National Association of Securities Dealers, Inc. ("NASD") notified Dean Witter that Defendants had commenced an arbitration proceeding against Dean Witter, Robert Howard, and Paul J. Siler (the "Arbitration"). A true and correct copy of the original Statement of Claim, dated March 7, 1997, is attached as Exhibit "A" to this Amended Verified Complaint ("the Original Statement of Claim"). A true and correct copy of the Amended Statement of Claim, dated

April 10, 1997, is attached as Exhibit "B" to this Amended Verified Complaint ("the Amended Statement of Claim").

7. As evidenced by the Amended Statement of Claim, Defendants seek to arbitrate claims arising out of the purchase of investments in 1986, more than six years before the date they filed the Original Statement of Claim with the NASD. The Original Statement of Claim is stamped "Received March 12, 1997 " by the NASD.

8. Dean Witter and Defendants are parties to an arbitration agreement. Consistent with that agreement, Defendants filed their Arbitration with the NASD.

9. At the time Defendants filed their Original Statement of Claim with the NASD, they also signed and filed a Uniform Submission Agreement, attached to this Amended Verified Complaint as Exhibit "C." Under the terms of the Uniform Submission Agreement, Defendants agreed to arbitrate their claims and disputes with Plaintiff in accordance with the rules set forth in the NASD Code of Arbitration Procedure (the "NASD Code").

10. The NASD Code prohibits the submission of stale claims to arbitration. Rule 10304 of the NASD Code specifically states:

> No dispute, claim, or controversy shall be eligible for submission to arbitration under this Code where six (6) years have elapsed from the occurrence or event giving rise to the act or the dispute, claim or controversy. This Rule shall not extend applicable statutes of limitations, nor shall it apply to any case which is directed to arbitration by a court of competent jurisdiction.

11. A cursory review of Defendants' Amended Statement of Claim demonstrates that their claims arise entirely from the purchases of various securities in 1986, more than ten years ago, and well beyond the outside limit of eligibility established by Rule 10304.

12. To be arbitrable, a controversy must satisfy the eligibility requirement of Rule 10304, which is a jurisdictional prerequisite. Rule 10304 limits the scope of the parties' contractual agreement to arbitrate. The parties may arbitrate only disputes and claims arising out of transactions made within six years before the filing of a statement of claim.

13. Because this controversy and all of the claims asserted by Defendants in their Amended Statement of Claim arise from purchases of investments made by Defendants before March 12, 1991, the dispute is ineligible for arbitration under Rule 10304.

COUNT I
(INJUNCTIVE RELIEF)

14. Dean Witter incorporates the allegations of paragraphs 1 through 13 above by reference.

15. Defendants' claims are ineligible for arbitration under Rule 10304 of the NASD Code.

16. As determined by the United States Court of Appeals for the Tenth Circuit precedent, Rule 10304 (formerly Section 15) of the NASD Code is a jurisdictional eligibility requirement that must be applied by the courts to bar arbitration of claims based on transactions that took place more than six years before the filing of a

statement of claim. *See Cogswell v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 78 F.3d 474, 478-81 (10th Cir. 1996).

17. Because the Amended Statement of Claim exclusively concerns claims relating to the purchases of securities made by Defendants in 1986, more than six years before they filed their Original Statement of Claim, it is substantially likely that Dean Witter will prevail on the merits.

18. Irreparable harm will ensue if Dean Witter is required to arbitrate ineligible, non-arbitrable claims. Dean Witter will be forced to expend significant time and resources needlessly and irretrievably to defend themselves against claims that they never agreed to arbitrate.

19. If Dean Witter is forced to arbitrate ineligible, non-arbitrable claims, the potential injury to Plaintiff outweighs any possible harm to Defendants.

20. Plaintiff has no adequate remedy at law. A preliminary and permanent injunction would prevent the needless expense of the parties' time and resources and therefore serve the public interest. Furthermore, protecting Dean Witter's right to abide by the contract terms agreed to in the arbitration agreement also serves the public interest.

21. Dean Witter's Answer to the Statement of Claim currently is due on Tuesday, July 22, 1997, and discovery and hearings will follow the filing of the Statement of Answer. A preliminary injunction therefore is necessary to maintain the status quo.

COUNT II
(DECLARATORY RELIEF)

22. Plaintiff incorporates paragraphs 1 through 21 above by reference.

23. A present and actual controversy exists between Plaintiff and Defendants concerning the arbitrability of claims arising out of investments purchased by Defendants prior to March 12, 1991. Pursuant to 28 U.S.C. § 2201, Plaintiff requests that the Court declare the rights and other relations among the parties, and enter a declaration that Defendants' claims arising from investments Defendants purchased prior to March 12, 1991 are ineligible for arbitration.

WHEREFORE, Plaintiff respectfully requests that:

1. The Court enter a preliminary injunction enjoining Defendants, pending entry of a final determination in this action, from proceeding with the prosecution, in arbitration or otherwise, of any claims arising out of investments Defendants purchased more than six years prior to filing their Original Statement of Claim (investments purchased prior to March 12, 1991) against and [sic] Dean Witter, or any of Dean Witter's officers, directors or employees, present or former;

2. The Court enter a permanent injunction enjoining Defendants from proceeding with the prosecution, in arbitration or otherwise, of any claims arising out of investments Defendants purchased more than six years prior to filing their Original Statement of Claim (investments purchased prior to March 12, 1991) against and

[sic] Dean Witter, or any of Dean Witter's officers, directors or employees, present or former; and

3. The Court enter an Order declaring that the Defendants' claims arising out of investments purchased prior to March 12, 1991 are ineligible for arbitration.

4. The Court grant such other and further relief as the Court deems just and proper.

Dated: July 17 1997.

DAVIS, GRAHAM & STUBBS LLP

By: /s/ Lisa S. Kahn
Lisa S. Kahn
370 Seventeenth Street,
Suite 4700
Denver, Colorado 80202
Telephone: (303) 892-9400
Facsimile: (303) 893-1379
D.C. Box No. 3

ATTORNEYS FOR PLAINTIFF
DEAN WITTER REYNOLDS INC.

Plaintiff's Address:

Dean Witter Reynolds Inc.
130 Liberty Street, 27th Floor
New York, NY 10006

VERIFICATION

I, James Foley, verify that I am a Senior Vice President and Branch Office Manager of Dean Witter Reynolds Inc., employed at the Denver Tech Center branch office located in Denver, Colorado, and that the facts set forth in the foregoing Amended Verified Complaint are true

and correct to the best of my knowledge, information, and belief. I understand that false statements herein are subject to the penalties of 28 U.S.C. § 1746 relating to unsworn declarations to authorities.

Dated: 17th day of July, 1997.

DEAN WITTER REYNOLDS INC.

By: /s/ James Foley
James Foley, SENIOR VICE PRESIDENT AND BRANCH OFFICE MANAGER

NASD Code of Arbitration Procedures

10101. Matters Eligible for Submission. This Code of Arbitration Procedure is prescribed and adopted pursuant to Article VII, Section 1(a)(iv) of the By-Laws of the Association for the arbitration of any dispute, claim, or controversy arising out of or in connection with the business of any member of the Association, or arising out of the employment or termination of employment of associated person(s) with any member, with the exception of disputes involving the insurance business of any member which is also an insurance company:

(a) between or among members;

(b) between or among members and associated persons;

(c) between or among members or associated persons and public customers, or others; and

(d) between or among members, registered clearing agencies with which the Association has entered into an agreement to utilize the Association's arbitration facilities and procedures, and participants, pledgees, or other persons using the facilities of a registered clearing agency, as these terms are defined under the rules of such a registered clearing agency.

[Amended eff. May 7, 1991; Oct. 1, 1993; amended by SR-NASD-98-86 eff. Nov. 19, 1998.]

10304. Time Limitation Upon Submission. No dispute, claim, or controversy shall be eligible for submission to arbitration under this Code where six (6) years have elapsed from the occurrence or event giving rise to the act or dispute, claim or controversy. This Rule shall not extend applicable statutes of limitations, nor shall it apply to any case which is directed to arbitration by a court of competent jurisdiction.

[Amended eff. Oct. 1, 1984.]

10324. Interpretation of Provisions of Code and Enforcement of Arbitrator Rulings. The arbitrators shall be empowered to interpret and determine the applicability of all provisions under this Code and to take appropriate action to obtain compliance with any ruling by the arbitrator(s). Such interpretations and actions to obtain compliance shall be final and binding upon the parties.

[Amended eff. Nov. 16, 1992.]